

REMARKS

The official action of 13 February 2009 has been carefully considered and reconsideration of the application as amended is respectfully requested.

Claims 1-10 have been amended to render them more definite and thereby to remove the bases for the rejections under 35 USC 112, second paragraph, appearing at paragraphs 2-7 of the official action. The recitation in claim 1 that the process results in a **non-labile** flavorant that can impart a basmati aroma to a foodstuff draws support from the specification as filed at, for example, page 1, lines 9-12 (“imparting stability to an otherwise labile aroma”); page 3, lines 27-29 when considered with page 2, lines 12-19; and the Examples on pages 5-6. The recitation that the ratio in claim 4 is a weight ratio would be clear to one of skill in the art, for example, from the Examples and in particular the tabulation in Example 2, which refers to the amounts of the binder and 2-acetyl-1-pyrroline by weight. All claims as amended are respectfully believed to be sufficiently definite to satisfy the dictates of 35 USC 112, second paragraph. (Applicants respectfully note in this respect that the term “labile” is recited in the **claims** of at least 2161 issued patents.)

New claims 11-16 have been added more completely to define the subject matter which Applicants regard as their invention. Support for the negative limitation in claim 12 appears, for example, in the specification at page 3, lines 20-29. Support for the recitations in claim 13 appears in Examples 2 and 3 on pages 5-6. Support for the recitations in claim 14 appears in original claim 1.

The claims were rejected under 35 USC 103(a) as allegedly being unpatentable over Partanen et al in view of Buttery et al and Wright or Gasser et al. The claims were also rejected under 35 USC 103(a) as allegedly being unpatentable over Leshik in view of Buttery et al and Wright or Gasser et al. Applicants respectfully traverse these rejections.

The claimed invention is based at least in part upon Applicants' discovery of a solution to the longstanding problem of stabilizing the otherwise labile flavor molecule, 2-acetyl-1-pyrroline ("APR"), such that this flavor molecule can be added directly to a foodstuff in powder form without the necessity of first releasing the flavorant from its salt form. This longstanding problem is described in the Background portion of the present specification (see, e.g., page 2, lines 12-19 and page 3, lines 20-24) and is confirmed in the cited Buttery et al reference. See Buttery at column 3, lines 13-30 ("APR was isolated in pure or substantially pure form by gas liquid chromatography as a clear, colorless liquid which is stable in solution (e.g., water, ethanol) but which in the pure state, turns red on standing."). As described in Buttery, storage of the APR in a salt form requires either that the APR be released by contact with a basic substance prior to use or used in its salt form (see Buttery at column 3, lines 31-35).

The Buttery et al patent was granted in June 1985 and no solution to the aforementioned problem has been described in any of the subsequent references cited by the Examiner (see discussion below). On the other hand, one of the primary references, Leshik, (cited by the Examiner to show that it was known to stabilize a molecule with film forming encapsulants) was granted in December 1981, i.e., four (4) years prior to the grant and two (2)

years prior to the filing date of Buttery. Clearly, the longstanding, general knowledge that molecules can be stabilized with film forming encapsulants does not mean that it would be obvious that the otherwise labile molecule 2-acetyl-1-pyrroline can be rendered non-labile by such encapsulation. Otherwise, the prior art, as represented for example by Buttery, would not have needed to store the molecule in a salt form that requires release prior to use.

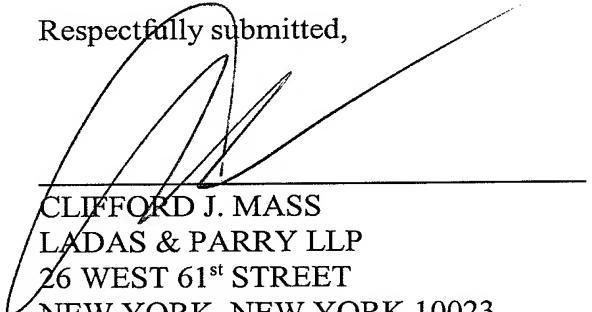
Each of the primary references cited by the Examiner, Partanen et al and Leshik, pertain to the encapsulation of molecules other than APR (caraway extract and curcumin colorant, respectively) that cannot provide one of skill in the art with even a reasonable expectation of success in the claimed process for rendering the otherwise labile flavor molecule, APR, non-labile. Thus, the primary references relate to the stabilization of molecules with entirely different physical characteristics and requirements (e.g., photo-stability and solubility) than APR. Moreover, even if encapsulation, including spray drying, of a particular flavor would make the flavor **relatively** more stable to oxidation and the like than it would have been otherwise, this does not mean that it would make a labile flavor molecule non-labile. See, e.g., Wright reference at page 16, first full paragraph (describing the **semi-permeable** shell formed by spray drying).

In the absence of any disclosure in the cited references that would provide even a reasonable expectation of success in the claimed method of stabilizing APR, the references cannot set forth even a *prima facie* case of obviousness for the invention as claimed. See MPEP 2143.02 (acknowledging that a reasonable expectation of success is required for *prima facie* obviousness). This is *a fortiori* true where, as here, the cited art

teaches away from the claimed step (b) of adding an ethanol solution of APR to an emulsifier. See Wright at page 16, second full paragraph (“Some solvents should not be used in the formulation of the keys. Ethanol will increase the flavour loss. . . ”).

In view of the above, Applicants respectfully submit that the prior art and all other rejections of record have been successfully traverse and should be withdrawn. An early notice of allowance is earnestly solicited and is believed to be fully warranted.

Respectfully submitted,



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